

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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4 JUST FILM, INC.; RAINBOW BUSINESS
SOLUTIONS, doing business as
5 PRECISION TUNE AUTO CARE;
BURLINGAME MOTORS, INC.; DIETZ
6 TOWING, INC.; THE ROSE DRESS,
INC.; VOLKER VON GLASENAPP; JERRY
7 SU; VERENA BAUMGARTNER; TERRY
JORDAN; LEWIS BAE; and ERIN
8 CAMPBELL, on behalf of
themselves, the general public
9 and those similarly situated,

No. C 10-1993 CW
ORDER
SUPPLEMENTING
OCTOBER 31, 2012
ORDER (DOCKET NO.
411)

10 Plaintiffs,

11 v.

12 MERCHANT SERVICES, INC.; NATIONAL
PAYMENT PROCESSING; UNIVERSAL
13 MERCHANT SERVICES, LLC; UNIVERSAL
CARD, INC.; JASON MOORE; NATHAN
JURCZYK; ROBERT PARISI; ERIC
14 MADURA; FIONA WALSHE; ALICYN ROY;
MBF LEASING, LLC; NORTHERN
15 FUNDING, LLC; NORTHERN LEASING
SYSTEMS, INC.; GOLDEN EAGLE
LEASING, LLC; LEASE SOURCE-LSI,
16 LLC; LEASE FINANCE GROUP, LLC;
JAY COHEN; LEONARD MEZEI; SARA
17 KRIEGER; BRIAN FITZGERALD; SAM
BUONO; MBF MERCHANT CAPITAL, LLC;
18 RBL CAPITAL GROUP, LLC; WILLIAM
HEALY; JOSEPH I. SUSSMAN; JOSEPH
19 I. SUSSMAN, P.C.; and SKS
ASSOCIATES, LLC,

20 Defendants.

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23 Having reviewed the declaration of Kristen Simplicio offered
by Plaintiffs in response to the Court's October 31, 2012 order,
24 Docket No. 411 (hereinafter, Simplicio declaration), the Court
25 ORDERS as follows:
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1 By November 14, 2012, Plaintiffs shall file in the docket of
2 this action the written consents they have received from non-
3 parties waiving their confidentiality designations to certain
4 exhibits, or portions thereof, that are at issue in the pending
5 motion to seal, and any communication that they have had with
6 MasterCard regarding Exhibit Z after the Simplicio declaration was
7 filed.

8 The Court notes that Plaintiffs did not address in the
9 Simplicio declaration the portions of their pending motion for
10 leave to file a third amended complaint that are at issue in the
11 motion to seal. See Docket No. 383, 3:15, :26. By November 14,
12 2012, Plaintiffs shall file a supplemental declaration providing
13 the information requested in the October 31, 2012 order for these
14 portions.

15 In their original motion to seal and supporting declaration,
16 Plaintiffs represented that Defendants had designated the
17 documents that they sought to seal as confidential. Docket No.
18 385. In the Simplicio declaration, Plaintiffs now attest that it
19 was actually they or certain nonparties, and not Defendants, that
20 designated some of those documents as confidential. In the
21 supplemental declaration that Plaintiffs must file by November 14,
22 2012, Plaintiffs shall provide an explanation for the incorrect
23 statements made in the original motion to seal and supporting
24 declaration.

25 In the Simplicio declaration, Plaintiffs purport to provide
26 reasons that they have designated as confidential Exhibits W,
27 PPPP, QQQQ, RRRR, WWWW, VVVV and XXXX. Because the public
28 interest favors filing all court documents in the public record,

United States District Court
For the Northern District of California

any party seeking to file a document under seal in connection with a non-dispositive motion must demonstrate good cause to do so. Pintos v. Pac. Creditors Ass'n, 605 F.3d 665, 678 (9th Cir. 2010). If the motion is dispositive, the Ninth Circuit requires that the party seeking to seal records meet a more stringent "compelling reasons" standard. See Kamakana v. City & Cnty. of Honolulu, 447 F.3d 1172, 1178-81 (9th Cir. 2006). Neither standard can be met simply by showing that the document is subject to a protective order or by stating in general terms that the material is considered to be confidential, but rather must be supported by a sworn declaration demonstrating with particularity the need to file each document under seal. See Civil Local Rule 79-5(a). Although Plaintiffs have generally identified the contents of these exhibits as "bank statements and related banking documents" and "consumer credit reports," they have not provided specific reasons supporting the sealing of these documents, either in part or in their entirety. Plaintiffs are granted leave to do so in the supplemental declaration that they must file by November 14, 2012. Failure to do so will result in denial of their motion to seal as to these documents, subject to the privacy protections contained in Federal Rule of Civil Procedure 5.2(a).

Finally, there appear to be multiple errors in the Simplicio declaration, including:

(1) In Table C, Plaintiffs state that no portion of Exhibit U was designated as confidential, but identify Fiona Walshe as having designated Exhibit U as confidential;

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1 (2) In Table C, Plaintiffs state that Exhibits HHH, III and
2 JJJ have been designated as confidential in their entirety, but do
3 not identify which party or non-party designated them as such; and

4 (3) In paragraph 3(b), Plaintiffs identify Exhibit XXXX as
5 the "consumer credit reports for Plaintiffs Volker Von Glasenapp
6 and Lewis Bae," but Exhibit XXXX does not contain a credit report
7 and is not identified as confidential in Table C. It appears
8 Plaintiffs intended to identify Exhibit YYYY, which they state in
9 Table C was designated as confidential by Plaintiffs.

10 Plaintiffs shall address these apparent errors in the
11 supplemental declaration that they must file by November 14, 2012.

12 IT IS SO ORDERED.

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14 Dated: 11/13/2012


CLAUDIA WILKEN
United States District Judge